

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 96-137-W/S - ORDER NO. 97-126  
FEBRUARY 13, 1997

IN RE: Application of Tega Cay Water ) ORDER DENYING  
Service, Inc. for Approval of ) PETITION FOR  
an Increase in Rates and Charges ) REHEARING OR  
for Water and Sewer Service. ) RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Petition for Rehearing or Reconsideration (the "Petition") filed by Tega Cay Water Service, Inc. ("TCWS" or the "Company"). By its Petition, TCWS requests that the Commission rehear the issues from the proceedings of the instant Docket or to reconsider Commission Order No. 96-879, dated December 23, 1996. In Order No. 96-879, the Commission denied the Company's request for an increase in rates and charges. TCWS's Petition was filed pursuant to S.C. Code Ann. §58-5-330 (1976) and 26 S.C. Code Ann. Regs. 103-881 (Supp. 1996). Additionally, the Consumer Advocate for the State of South Carolina ("the Consumer Advocate") filed a letter requesting clarification of the Commission's ruling on the proposal set forth by the Consumer Advocate's witness concerning the charging of tap fees. For the reasons set forth below, the Commission denies the Petition filed by TCWS and addresses the Consumer Advocate's request for clarification.

By its Petition, TCWS alleges that "the rates which the Commission has allowed the Company to charge are confiscatory and unlawful." (Petition at 2.) To support its allegation, TCWS asserts (1) that there is no evidence in the record to support the Commission's finding that an operating margin of 0.23% is appropriate (Petition at 3.); (2) that the Commission has relied upon misplaced or erroneous justification for the rates which the Company maintained for the Company in Order 96-879 (Petition at 5 - 7.); and (3) that the record does not support the Commission's adoption of the accounting and pro-forma adjustments proposed by Consumer Advocate. (Petition at 7-8.)

In Order No. 96-879, the Commission denied the Company's request for an increase in rates and charges. In denying the Company's request for an increase, the Commission relied on the case of Seabrook Island Property Owners Association v. South Carolina Public Service Commission, et al., 303 S.C. 493, 410 S.E. 2d 672 (1991), which allows the Commission to consider the price at which the Company's services are rendered and the quality of that service. (Order No. 96-879 at 20.) As stated in Order 96-879, the Commission considered the testimony of customers concerning poor water quality and poor service by the Company with respect to maintenance and responsiveness. (Order No. 96-879 at 20 - 21.) In addition, the Commission weighed the current rates charged by the Company and the proposed rates requested by the Company in its Application and considered those rates against the type of service that the Company provides to its customers. Based

on the rates currently charged, which the Commission observed were second highest in the state for water rates and fifth highest in the state for sewer rates; the quality of service provided, according to the customers who must live with that service daily; and the effect the proposed increase would have on the rates paid by the customers, the Commission found that no increase in rates was appropriate for the Company. (Order 96-879 at 21.)

The Company proposes that the Commission, in referring to the testimony of the consumer witnesses regarding the quality of water service, ignored the evidence from the Staff that the Company provided "acceptable service to its customers." (Petition at 7.) The Petition refers to Hearing Exhibit No. 5, Utilities Division Report, Exhibit E, page 1. The Commission notes that the reference by the Company is to a "Review of Service Provided by the Company" and is contained in the documentation prepared by the Commission Staff pursuant to the Staff's audit of the Company in the instant proceeding. On that report the Staff states "[t]he Company provides acceptable service to its customers." (Hearing Exhibit No. 5, Utilities Department Report, Exhibit E, p. 1.) Like any trier of fact, the Commission is called upon, in weighing the evidence presented during a proceeding, to decide between conflicting testimony and contradicting evidence. In the instant proceeding, the Commission chose to give greater weight to the testimony presented by the consumers who must live with the water quality and service daily, than to the Staff's audit, which according to the Hearing Exhibit was based upon an inspection

conducted on one day, August 30, 1996. (See, Hearing Exhibit No. 5, Utilities Department Report, Exhibit E, p. 1.) The Commission believes that its decision is supported by the record and finds no error with its decision.

The Company also alleges error by the Commission for noting in Order No. 96-879 that the Commission had "recently ordered a management audit of the Utilities, Inc. subsidiaries operating in South Carolina." (Order No. 96-879 at 21-22.) The Company asserts that the decision from another docket should not have been a factor in the Commission's decision in the instant proceeding. The record in the instant proceeding clearly shows that questions and problems exist within TCWS's allocation process. Through cross-examination of the Company's witnesses, the Consumer Advocate and the City of Tega Cay elicited testimony which raised questions as to whether certain allocations directly benefited TCWS ratepayers. In Order No. 96-879, regarding the discussion concerning non-salary allocated expenses, the Commission stated that "[t]he Company did not offer any sound evidence to the satisfaction of the Commission that any of the allocated expenses benefited the Company's ratepayers, either directly or indirectly." (Order No. 96-879 at 16.) In commenting on the management audit, the Commission observed that it "hopes that this management audit will identify areas of improvement." (Order No. 96-879 at 22.) The Commission finds no error in commenting on its decision from another docket, which decision may directly impact this Company.

Additionally, the Company contends that "the Commission purportedly reviewed 'the effects of the proposed increase on the customers ... [y]et the Order fails to refer to the evidence of a single witness with respect to such 'effect'." (Citation omitted.) (Petition at 7.) In Order No. 96-879 the Commission referred to the testimony of several witnesses who complained about the price they pay for service. The testimony of those consumer witnesses in conjunction with the evidence concerning the level and quality of service being provided and the level of rates currently paid by the customers, is sufficient for the Commission to conclude that the effect of the proposed increase would be unjust for the customers to pay any higher rates. The Commission finds no error in referring to "the effects of the proposed increase on the customers" in its decision.

Even after determining that no increase in rates and charges was appropriate for the Company, the Commission must still specify an allowable operating margin in its Order. See S.C. Code Ann. §58-5-270(H) (Supp. 1995). In reaching its determination of an appropriate operating margin, the Commission must consider the record before it and make determinations on the proposed accounting and pro-forma adjustments. By its Petition, the Company does not address the adjustments individually but merely states that the record does not support the adoption of the adjustments. (Petition at 8.) By way of argument, the Company simply states that the Commission has rejected nearly all of the same proposals in previous proceedings. (Petition at 8.)

In Hamm v. South Carolina Public Service Commission and South Carolina Electric and Gas Company, 309 S.C. 282, 422 S.E.2d 110 (1992), the Supreme Court of South Carolina stated that "the declaration of an existing practice may not be substituted for an evaluation of the evidence." In the case at bar, the Commission evaluated the evidence and chose the adjustments proposed by the Consumer Advocate. Pursuant to the above cited case, the Commission cannot simply rely on a past practice as the sole justification for a decision. Likewise, the Company cannot simply rely on a blanket assertion that the Commission had previously rejected similar proposals as a basis on which to request reconsideration.

In Order No. 96-879, the Commission adopted the accounting and pro-forma adjustments proposed by the Consumer Advocate. (Order No. 96-879 at 10.) The witness presented by the Consumer Advocate, witness Bleiweis, testified regarding his proposed adjustments and explained why his proposed adjustments were appropriate. In examining the record, the Commission obviously found witness Bleiweis' explanations and adjustments more compelling and reasonable than those adjustments presented by the Company and by the Staff, and therefore, the Commission adopted the Consumer Advocate's proposed adjustments. Order No. 96-879 contains explanations, based on the testimony of the Consumer Advocate's witness, concerning the Commission's adoption of those proposed adjustments. As such, the adjustments adopted in Order 96-879 are supported by the record, contrary to the Company's

assertion that the adjustments are not supported by the record. The Commission discerns no error in utilizing the accounting and pro-forma adjustments proposed by the witness for the Consumer Advocate.

Likewise, the Company's assertion that the operating margin established in Order No. 96-879 is not supported by the record is in error. Based on the Commission's determination that no increase in rates and charges was appropriate for the Company and using the adjustments adopted by the Commission in Order No. 96-879, the income for return and subsequent operating margin of 0.23% were calculated and thereafter approved in Order 96-879. As noted by the Commission in Order No. 96-879, "the Commission believes that careful and prudent management will allow the Company to operate under its present rates and charges." (Order No. 96-879 at 21.) This rationale is consistent with Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923) which provides that rates established by the Commission "must be adequate under efficient and economical management, to maintain and support its credit ...". Furthermore, and as stated in Order 96-879 in relying on the precedents from Bluefield, supra, and Federal Power Commission v. Hope Natural Gas, 320 U.S. 591 (1944), the Commission does not ensure through regulation that a utility will produce net revenues. (Order 96-879 at 17.) Therefore, the Commission finds no error in the determination of an appropriate operating margin and finds that the resulting operating margin is not confiscatory

nor unlawful as alleged by the Company.

Upon consideration of points raised in the Company's Petition, the Commission finds no error in its determinations made in Order No. 96-879, and hereby denies the Company's Petition.

The Consumer Advocate filed a letter requesting clarification of the Commission's ruling on witness Bleiweis' proposal concerning the charging of tap fees. In his testimony, witness Bleiweis recommended that TCWS only be allowed to charge a tap fee when TCWS actually performed the work of tapping on a new customer or if TCWS is required to reimburse another party for that work. Mr. Bleiweis stated that he understood that the tap fee included a plant capacity fee and a tap fee, and given that TCWS now relies on bulk water purchased from York County, Mr. Bleiweis stated that he believed the plant capacity portion of the tap fee was no longer appropriate. However, Mr. Bleiweis did not quantify an amount attributable as a plant capacity fee.

The Commission notes that TCWS did not file for a change in the tap fee in its Application for an increase in rates and charges. TCWS filed its Application for an increase in rates and charges pursuant to S.C. Code Ann. §58-5-240 (Supp. 1995). Section 58-5-240 sets out the parameters for filings in rate cases in gas, water, sewer, and other cases. Subsection (a) states as follows:

Whenever a public utility desires to put into operation a new rate, toll, rental, charge, or classification of new regulation.... (emphasis added)

Part (b) states that:



After the schedule has been filed, the Commission shall, after notice to the public, such as the Commission may prescribe, hold a public hearing concerning the lawfulness or reasonableness of the proposed changes. (emphasis added)

It should be noted that the statutory provisions governing these proceedings refer to changes and not rates or charges which are not proposed for change. Hamm v. South Carolina Public Service Commission and Carolina Water Service, Inc., 315 S.C. 119, 432 S.E.2d 454 (1993) held in a related scenario, where plant impact fees had previously been approved by the Commission and no change had been proposed by the Company in a subsequent proceeding, that such a utility rate, which had been previously established in a rate proceeding was presumptively correct, and that the Commission was not required to make factual findings regarding the reasonableness of said plant impact fees.

Further, the Consumer Advocate took the position in the above cited case that plant impact fees could be used only for plant expansion. The Court affirmed the Commission's finding that plant impact fees used for investment in plant, as well as in providing services were fair and reasonable. 432 S.E.2d at 458. Since the Company is seeking no adjustment of the currently authorized tap fee, the Commission will not reduce or limit the Company's collection of its previously authorized tap fee.

However, the Consumer Advocate is not without remedy. If the Consumer Advocate believes that TCWS is charging an improper or unjustified tap fee, the Consumer Advocate may petition the Commission for a proceeding to address the tap fees charged by

TCWS pursuant to S.C. Code Ann. §58-5-290 (1976).

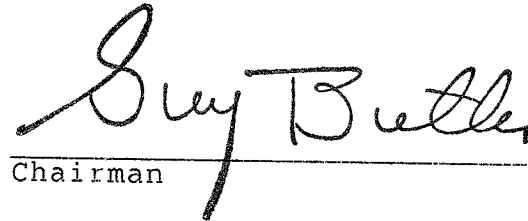
IT IS THEREFORE ORDERED THAT:

1. The Petition of TCWS requesting Reconsideration or Rehearing of Commission Order No. 96-879 is denied.

2. The request of the Consumer Advocate for clarification is addressed herein.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)